

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED

AUG 27 2004

CLERK'S OFFICE
U. S. DISTRICT COURT
EASTERN MICHIGAN

**GENERAL MOTORS CORPORATION,
and AM GENERAL, LLC,**

Plaintiffs,

HONORABLE ARTHUR TARNOW

vs.

CIVIL ACTION NO. 01-71103

CIVIL ACTION NO. 03-72731

**LANARD TOYS, INC., and
LANARD TOYS LIMITED,**

Defendants.

JURY TRIAL DEMANDED

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**ORDER REGARDING
SUMMARY JUDGMENT MOTIONS**

Plaintiffs, General Motors Corporation ("GM") and AM General, LLC ("AMG") have moved for summary judgment. Defendants, Lanard Toys, Inc. and Lanard Toys Limited ("Lanard") has also moved for summary judgment. The Court has considered the briefs and arguments of the parties and is fully appraised of the issues. For the reasons set forth on the record on Friday, August 13, 2004, the Court hereby orders:

1. Lanard's "CORPS! ATK Vehicle" is held to infringe both the Hummer/Humvee Trade Dress and the Hummer Nose Design Trademark (U.S. Registration No. 1,959,544).
2. Lanard's "Mean Machine" is held not to infringe the Hummer/Humvee Trade Dress or the Hummer Nose Design Trademark.
3. Lanard's "Ultra Corps!" toy is held not to infringe the Hummer/Humvee Trade Dress. The Court also determined that infringement of the Hummer Nose Design Trademark presents a jury question.
4. Lanard's "Super Shots" toy is held to present a jury question as to infringement of both the Hummer/Humvee Trade Dress and the Hummer Nose Design Trademark.
5. Lanard's "Infrared Vehicle" toy is held to present a jury question as to infringement of both the Hummer/Humvee Trade Dress and the Hummer Nose Design Trademark.
6. Lanard's defenses of "functionality" and no "secondary meaning" are dismissed.
7. Lanard's defense of "ownership" is dismissed.

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8. All of Lanard's Affirmative Defenses are dismissed at summary judgment except for Lanard's laches and estoppel defenses.

Therefore,

IT IS ORDERED that Defendants' Renewed Motion for Summary Judgment [155] is GRANTED IN PART and DENIED IN PART.


IT IS FURTHER ORDERED that General Motors' Motion for Summary Judgment of Infringement of the Hummer Nose Design Trademark [160] is GRANTED IN PART and DENIED IN PART.

IT IS FURTHER ORDERED that Plaintiffs' Joint Motion for Summary Judgment of Infringement of the Hummer and Humvee Vehicle Trade Dress [161] is GRANTED IN PART and DENIED IN PART.

IT IS FURTHER ORDERED that Plaintiffs' Joint Motion for Summary Judgment as to Defendants' Affirmative Defenses [162] is GRANTED IN PART and DENIED IN PART.

IT IS FURTHER ORDERED that Defendants' Renewed Motion to Strike the Declaration of Charles Ellerbrock [172] is DISMISSED AS MOOT.

IT IS FURTHER ORDERED that Plaintiffs' Motion to File Reply Briefs in Excess of Five Pages [180] is GRANTED.


HON. ARTHUR TARNOW
U.S. District Court Judge

Dated: **AUG 27 2004**